

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

214

CRM-M-7153-2023 (O&M)

Date of decision: 02.05.2023

ASHOK KUMAR BOSAK

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Atul Goyal, Advocate for the petitioner

Mr. Manipal Singh Atwal, DAG Punjab

AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioner in case of FIR No.210 dated 03.11.2020, registered under Section 302 IPC (Sections 120-B and 201 IPC added later on) at Police Station Jodhewal, District Police Commissionerate Ludhiana.

2. Learned counsel contends that the petitioner is in custody for the last 2 years and 4 months. He was not named in the FIR and the deceased was his brother. The allegations against him are of having illicit relationship with the wife of the deceased and on his asking co-accused Azad Alam, Pawan Kumar, and Monu @ Ijamamul Haq, had killed the said brother. Co-accused Azad Alam, who has been alleged to have caused fatal injuries to the deceased, had approached this Court for grant of bail, which was earlier withdrawn at that stage vide order dated 07.02.2022, Annexure P-7, with liberty to file afresh after examination of PW1-Dilbagh Singh and PW2-Jaswinder Singh,. This Court had also directed the trial

Court as well as State of Punjab to make every effort to examine Dilbagh and Jaswinder Singh as the first two witnesses, as expeditiously as possible. In his second petition, co-accused Azad Alam, was granted bail by this Court vide order dated 20.09.2022, Annexure P-10, while noticing that the statement of the aforesaid two witnesses had been recorded and Jaswinder Singh-PW1 had not supported the case of the prosecution and rather stated that he never made any statement before the Police and Dalbara Singh @ Dilbagh Singh-PW2 was declared partly hostile. It was observed that, it would be a moot point during the course of trial as to whether the petitioner (therein) could be convicted on the basis of said evidence of PW1 and PW2 and other evidence to be led by the prosecution or not. The evidence against the said co-accused Azad Alam was of having made an extra-judicial confession before PW1, who was the President of the Truck Union, while PW2, had stated before the Police that he had overheard the discussion of co-accused Azad Alam and the petitioner in a tavern, of having committed the crime. Co-accused Pawan Kumar, brother of the petitioner, was granted bail vide order dated 14.12.2022, Annexure P-11 on the same ground on which Azad Alam was granted, after having been in custody for 2 years. He further submits that the petitioner is not involved in any other case. Charges had been framed on 28.02.2022 and still 20 witnesses remain to be examined.

3. The custody certificate dated 01.05.2023 filed by learned State counsel is taken on record. As per the same, the petitioner is behind the bars for the last 2 years, 3 months and 27 days.

4. Learned State counsel on instructions from ASI Karanjit Singh opposes the bail on the ground that the petitioner had the motive and facilitated the commission of crime by advancing money to the co-accused. He is however

unable to controvert the submissions with regard to the examination of 2 witnesses, out of whom 1 has completely turned hostile and the other partially, as also his non-involvement in any other case, stage of trial and the 2 co-accused having been granted bail.

5. Heard.

6. In view of the facts and circumstances of the case, in particular that petitioner is in custody for the last 2 years, 3 months and 27 days; he is not involved in any other case; co-accused having been granted bail by this Court; material witnesses having not supported the prosecution case; 20 witnesses are yet to be examined; the trial is likely to take a considerable time, his further incarceration would not serve any useful purpose, thus the present petition for grant of regular bail deserves to be allowed.

7. As a result, the present petition is allowed. The petitioner is ordered to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of trial Court/Duty Magistrate concerned and subject to him not being required in any other case. The petitioner shall abide by the following conditions:-

1. The petitioner will not tamper with the evidence during the trial.
2. The petitioner will not pressurize/ intimidate the prosecution witnesses.
3. The petitioner will appear before the trial Court on each and every date fixed, unless is exempted by a specific order of Court.
4. The petitioner shall not commit an offence similar to the offence of which, he is an accused, or for commission of which he is suspected of.
5. The petitioner shall not directly or indirectly coerce, induce, threaten or promise to any person acquainted with the facts of the case so as to dissuade him/ her from disclosing such facts to the Court or to any police officer or tamper with the evidence in any manner.
6. The petitioner shall not in any manner misuse his liberty.
7. The petitioner shall furnish his address and mobile number to the Trial Court forthwith and shall not change the same till the conclusion

of the trial and in case for any reason, the petitioner seeks to change any of the aforesaid, the same shall be done only with prior intimation to the learned Trial Court, stating the reason for the same.

8. The petitioner shall deposit his passport, if any, with the Trial Court forthwith and in case, he does not have the passport, he shall furnish a specific affidavit in this regard.

8. It is made abundantly clear that in case there is any breach of the aforesaid conditions, the State shall be at liberty to seek cancellation of bail as granted to the petitioner by this order.

9. In view of the above, it is clarified that the observations made herein above are limited for the purpose of present proceedings and would not be construed as any opinion on the merits of the case and the trial would proceed independently of the aforesaid observations.

(AMAN CHAUDHARY)
JUDGE

02.05.2023
S.Sharma(syr)

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No